

Chapter 11:

Land Ownership

Sometimes the best way to conserve a wetland is to buy it. When you own the land, you are able to provide permanent protection, manage the land as you wish, and develop a set of conservation guidelines and a master plan to fit your needs. However, land ownership has difficulties and challenges as well; some of them significant. First, land is usually expensive, and raising sufficient funds can be a difficult task. Sometimes, a landowner is not willing to sell the property you really want to protect. Other times, there is more land available than funds to complete the purchase. Still, other times, the landowner will only sell a wetland if you buy additional land that you don't really want along with it.

Another challenge is the management responsibility that comes with the land. Who will manage it? What if your wetland floods a local road? What if noxious weeds become established? Who will do the work on the land? Can your focus area team afford to pay a manager or caretaker? Is there a retired volunteer who is willing to play this role? All these things should be considered.

Another important consideration is the issue of legal liability. Is your focus area team a legal entity (such as a nonprofit corporation) that can hold land? What are the liability issues in your area? Be sure to investigate this with your insurance agent and your attorney before entering a purchase agreement.

If, after considering all the factors, you decide that land purchase is the best way to proceed, look for a small area as a place to start—especially if your funding is limited. Once you have bought your first area and have worked through the entire process, the next purchase will be much easier.

Remember that there are a lot of incentive programs that can help you conserve wetlands. Some may be able to help with the purchase itself—others provide tax advantages, cost share for restorations, and other benefits after the land is in your ownership. For more information, see the chapter on Incentives.

Be sure to seek legal counsel before initiating any land purchase.

The purchase and ownership of land can be a very costly and frustrating process, and it is not suited for every focus area effort. Fortunately, there are other options that can achieve your conservation goals.

Conservation Easements

If your situation does not justify outright ownership of land, a nice alternative is a conservation easement—a binding, legal agreement between a property owner and an easement holder. The property owner continues to own the land, but allows the easement holder to manage the land as agreed. The goal is to protect the area, but still allow for ownership by others. Any property that has significant conservation or historic preservation values can be protected by an easement. Forests, wetlands, and endangered species habitat are a few of the areas that can be protected. The easement holder is responsible for the costs of maintaining the easement. A fund is usually attached to the property to assure that the area will be monitored and managed in perpetuity. The easement is legally recorded so it remains attached to the deed of the property, and all subsequent owners are bound by the restriction of the easement.

Typically, it is the responsibility of the easement holder to monitor the property on a regular basis to ensure that the agreement is not being violated. For most easements, an annual visit is typical. A report is filed in order to maintain a written record of the monitoring visits. If there is a violation of the agreement, the property owner is legally required to correct the violation.

A conservation easement brings tax benefits to the landowner. For example, if a property is worth \$200,000, and a permanent easement reduces the property value to \$120,000, then the value of the gift or donation is \$80,000, which can be deducted from the property owner's income over a period of years.

A conservation easement may also reduce a property owner's estate taxes. The property must be valued at its easement value rather than the original pre-easement value. Property tax assessments are usually lowered with attachment of easements. The Indiana DNR also has Classified Wildlife Habitat and Classified Forest Programs that reduce property taxes (see chapter on Incentives for more information).

Is a Conservation Easement Right for You?

According to The Conservation Easement Handbook [Diehl & Barrett, 1988. (Contact the Land Trust Exchange, 1017 Duke St., Alexandria, Virginia 22314 Phone: 703-683-7778)], you should only consider a conservation easement if you can answer "yes" to the following questions:

1. Is this the type of property we were formed to protect?
2. Is this an excellent example of that type of property?
3. Is an easement the best protection tool for this property?
4. Can we handle the responsibility of protecting it forever?

If you cannot answer yes to all of these questions, you probably should spend your conservation time and effort on other priorities.

Be sure to seek legal counsel before taking any steps toward obtaining a conservation easement.